vendor is excused from performance of the contract, but he cannot retain money paid on account of the proposed purchase or recover moneys remaining unpaid." Following out the rule, it is held that when the vendee has gone into possession under his contract he must bear the loss even though such loss occurs before the time set for conveyance.[5] It seems, therefore, that under the California authorities the vendee's equitable title plus possession or the right to possession will satisfy the condition of sole and beneficial ownership for the purposes of the policy. Thus the rule in most jurisdictions that the loss falls upon the equitable owner is restricted in California to cases where the equitable owner has been given possession or the beneficial incidents of ownership. It seems entirely just that the one having the use and profits of the property should bear the risks of ownership.[6]

W. H. S.

Mining Law: Location: Conveyance by Locators Prior to Discovery. —The United States Circuit Court of Appeals, in the case of Rooney v. Barnette,[1] recently held that the location of mineral ground gives the locator before discovery and while he is, with reasonable diligence, endeavoring to make a discovery, the right of possession against all intruders, and that it is a right which he may convey to another. A placer claim of 20 acres had been located by two individuals in June 1904. In September, 1904, while the defendant was mining on the ground under a contract to purchase the location, he made a discovery of gold. On September 4, 1905, he exercised his option to purchase the claim. On September 21, 1905, the plaintiffs entered and located part of the defendant's claim. The question was whether or not the ground was open to location by the plaintiffs. The court held that the original locators of the claim could lawfully convey to the defendant their right to complete the location by discovery, and that the claim thereafter perfected by the defendant's discovery was valid.

This case seems to be res integra in the Federal Courts. The Supreme Court of California appears to be the only other court which has considered this problem. Miller vs. Chrisman,[2] decided in 1903, was the first case in California, and has been the leading authority in subsequent cases in this state and is cited with approval in the case under discussion.[3] Chief Justice Beatty filed a strong dissenting opinion in the original case, declaring that under no circumstances, could there be an assignment of the right to locate a claim. The force of this dissenting opinion was, however, dissipated by the Chief Justice's

---

[5] McCollough vs. Home Ins. Co. (1909) 155 Cal. 659, 102 Pac. 814; Finkbohner vs. Glens Falls Ins. Co. (1907), 6 Cal. App. 379, 92 Pac. 318.

[6] See 9 Harvard Law Review, 106; 1 Columbia Law Review, 1.

[1] (October 7, 1912) 200 Fed. 700.

[2] (1903) 140 Cal. 440, 73 Pac. 1083, 74 Pac. 444.

[3] Weed v. Snook, (1904) 144 Cal. 439, 77 Pac. 1023; Merced Oil Mining Co. v. Patterson, (1908) 153 Cal. 624, 96 Pac. 90; Merced Oil Mining Co. v. Patterson, (1912) 162 Cal. 358, 122 Pac. 950.

concurrence in the case of Merced Oil Mining Co. v. Patterson,[4] a decision which goes even further than Miller v. Chrisman. The earlier case held that conveyances by several locators of placer ground prior to discovery to one of their own number were effective in vesting their inchoate rights in the grantee. The Patterson case held that conveyances to a third party were equally valid.

It is to be noted that the California cases have gone further than the Federal case in so far as they have sanctioned the conveyance of more than twenty acres to an individual prior to discovery and thus held that he may by working a discovery, perfect a right to a greater area than the twenty acres to which the Federal statute[5] limits him in making an original location. The Land Department[6] declined to follow the California decisions to this extent and held that an association location so perfected by an individual after conveyance was void as to all but twenty acres. It also held that in affirming the Miller v. Chrisman case, the United States Supreme Court[7] did not intend to and did not adopt the doctrine laid down by the Supreme Court of California. To relieve the hardship which this ruling would have brought about in the oil fields where this practice had been customary, Congress passed a curative act[8] which permitted an individual transferee who subsequently made a discovery, to obtain a patent to an area in excess of 160 acres.

H. M. A.

Mining Law—Phosphate Locations—Lode or Placer—Jurisdiction of Land Department.—A question which has been puzzling the courts and the Land Department for some time has been the subject of three recent decisions.[1]

They involve deposits of phosphates situated on the public domain.[2] Whether these deposits should be located as lodes or placers has been the mooted point. They exist in the form of sedimentary beds or "blanket veins" and have a dip and strike conforming to the strata of the adjoining limestone, sandstone and shale beds. They are distinctly separated from these including beds. The first case noted[3] was a suit brought in pursuance of an adverse claim

---

[4] (1908) 153 Cal. 624, 96 Pac. 90.
[5] Sec. 2331 U. S. Revised Statutes.
[6] Bakersfield Fuel & Oil Co., (1911), 39 L. D. 460.
[7] Chrisman v. Miller, (1905) 197 U. S. 313 (The appellate court did not make any adverse comment on the doctrine announced by the State Supreme Court).
[8] 36 Statutes at Large 1015.
[1] Duffield v. San Francisco Chemical Co. (Idaho), 198 Fed. 942; Harry Lode Mining Claim, 41 Land Decisions 403; San Francisco Chemical Co. v. Duffield (Wyoming), 201 Fed. 830.
[2] Because of their importance as soil fertilizers, phosphate lands have been included in recent conservation measures by Congress and the President empowered to withdraw these from entry. Act of June 25, 1910, 36 Stats. at L. 847.
[3] 198 Fed. 942.